



**MCI Telecommunications
Corporation**

1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

September 28, 1995

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: **Local Exchange Carriers' Rates, Terms, and Conditions for
Expanded Interconnection Through Virtual Collocation for
Special Access and Switched Transport, CC Docket No. 94-97,
Phase I, Motion to Vacate Prescription**

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Enclosed herewith for filing are the original and four (4) copies of MCI Telecommunications Corporation's Opposition, regarding the above-captioned matter.

Please acknowledge receipt by affixing an appropriate notation on the copy of the MCI Opposition furnished for such purpose and remit same to the bearer.

Sincerely yours,

Don Sussman
Regulatory Analyst

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¹ Local Exchange Carriers Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport, CC Docket No. 94-97, Phase I, Motion to Vacate Prescription ("Motion"), filed September 18, 1995.

collocation services,² and withdraws Bell Atlantic Transmittal No. 784, which proposed term pricing plans for virtual collocation services.³ MCI urges the Commission to dismiss Bell Atlantic's Motion because it is vague, procedurally deficient and anticompetitive.

II. Background

On February 28, 1995, the Common Carrier Bureau ("Bureau") released the Phase I Designation Order, which designated key rate level issues in the first phase of the Bureau's investigation of the virtual collocation tariffs, filed by the Tier 1 Local Exchange Carriers ("LECs").⁴ The Bureau designated for investigation (1) whether the overhead loadings established in the LECs' virtual collocation tariffs are justified; and (2) whether the maintenance-related charges in Bell Atlantic's virtual collocation tariffs are justified. The Bureau noted in the Phase I Designation Order that it would designate additional issues for

² Bell Atlantic Motion to Vacate at 3.

³ Bell Atlantic Telephone Company, Transmittal No. 784, Tariff F.C.C. No. 1, filed June 1, 1995.

⁴Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport, CC Docket No. 94-97, Phase I, Order Designating Issues for Investigation, 10 FCC Rcd 3927 (1995) ("Phase I Designation Order")

investigation and establish a separate pleading cycle for discussion of those issues in a subsequent designation order in Phase II of this docket.⁵

On May 11, 1995, the Commission released its Virtual Collocation Report and Order, which concluded that most of the LECs, including Bell Atlantic, had failed to meet their Section 204(a) burden of demonstrating that their overhead loading levels and, consequently, their virtual collocation rates are just and reasonable.⁶ In order to advance the competitive goals of the Commission's mandatory virtual collocation policy, the Commission exercised its authority under Section 205 of the Act, and prescribed the maximum permissible overhead loading levels for these LECs' virtual collocation rates.⁷

On June 1, 1995, Bell Atlantic filed Transmittal No. 784, which proposed to modify existing virtual collocation interconnection service offerings. These modifications included the introduction of term pricing plans for collocation services, revision of the rates, and an expansion of the equipment installation and engineering charges. While MCI is in favor of local exchange carriers

⁵Phase I Designation Order at ¶ 2. Since then, the Commission has issued phase II of its investigation. In Phase II, the Commission is investigating, among other things, the reasonableness of the direct cost components of the LECs' virtual collocation rates. Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport, CC Docket No. 94-97, Phase II, Order Designating Issues for Investigation, DA 95-2001, (released September 19, 1995) ("Second Designation Order").

⁶Id. at 2.

⁷Id. at 2.

offering term discount plans for virtual collocation services, on June 16, 1995, MCI filed a petition urging the Commission to reject Bell Atlantic Transmittal No. 784 because the proposed overheads exceeded the level prescribed by the Commission in its May 11, 1995 Virtual Collocation Report and Order,⁸ and because the direct costs had not been justified by the requirements of Section 61.38 of the Commission's rules.⁹

III. Bell Atlantic's Motion is Procedurally Deficient, Anticompetitive, and Vague

The Commission should dismiss Bell Atlantic's Motion because it is procedurally deficient, blatantly anticompetitive, and vague. In its Motion, filed September 18, 1995, Bell Atlantic requests that the Commission vacate the existing prescribed overhead loadings for virtual collocation services because the overhead loadings of the "comparable services" on which the prescribed virtual collocation overheads were based have changed. Bell Atlantic contends, therefore, that "the prescribed rates no longer have any direct correlation to the 'comparable' access services, and the underpinning of the prescription fails."¹⁰

⁸Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport, CC Docket No. 94-97, Phase I, Report and Order, FCC 95-200 (rel. May 11, 1995) ("Virtual Collocation Report and Order").

⁹ See Bell Atlantic Telephone Company Transmittal No. 784, Tariff F.C.C. No. 1, MCI Petition to Reject, filed June 16, 1995.

¹⁰ Bell Atlantic Motion at 2 - 3.

Essentially, Bell Atlantic advocates a “floating prescription” in that overheads would be set to match those of similar access services.

Bell Atlantic’s Motion to vacate the prescribed overhead loadings for virtual collocation should be dismissed because it is procedurally deficient. If Bell Atlantic was unsatisfied with the Commission’s prescription of overhead loadings, the proper vehicle for Bell Atlantic to voice its objection was in a petition for reconsideration. Under section 1.106(d)(1) of the Commission’s rules, a party may seek reconsideration of a Commission decision by filing a petition that states with particularity the respects in which the petitioner believes the action taken by the Commission should be changed. The petition shall state specifically the form of relief sought and, subject to this requirement, may contain alternative requests. Such a petition for reconsideration must be filed within 30 days from the date of public notice of the final Commission action.¹¹

While Bell Atlantic did file a Petition for Partial Reconsideration on July 5, 1995, Bell Atlantic did not request that the prescribed overhead loadings be vacated, as it has in its Motion, filed September 18, 1995.¹² In Bell Atlantic’s Petition for Partial Reconsideration, Bell Atlantic argued only that the Commission incorrectly calculated Bell Atlantic’s overhead loadings. Bell Atlantic

¹¹ 47 C.F.R §1.106(f); 47 U.S.C. §405(a).

¹² Local Exchange Carriers’ Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport, CC Docket No. 94-97, Phase I, Petition for Partial Reconsideration, filed July 5, 1995 (“Petition for Partial Reconsideration”).

argued that the Commission calculated Bell Atlantic's overhead loading levels based solely upon access channel terminations that do not use interoffice mileage. It argued that this is incorrect because the Commission's standard specifies that "comparable services" include a combination of channel terminations with and without interoffice mileage.¹³

If Bell Atlantic wanted to challenge the Commission's rate prescription, Bell Atlantic should have included that request in its Petition for Partial Reconsideration.¹⁴ It did not. It is now past the time (30 days) allowed by the Commission to request a reconsideration of the rules. Bell Atlantic may not make an end run around jurisdictional rules through the vehicle of a "Motion to Vacate Prescription." Bell Atlantic's Motion is procedurally deficient, and should be dismissed.

The Commission should also dismiss Bell Atlantic's Motion because it is vague, and offers no new evidence which the Commission has not already considered. Bell Atlantic argues, for example, that overhead loadings have changed for access services on which collocation rates are based. Bell Atlantic has not provided any evidence to support its argument, nor that demonstrates that such changes, if they have occurred, were significant. Bell Atlantic does

¹³ Petition for Partial Reconsideration at 1.

¹⁴ Bell Atlantic has not presented any information in its Motion to Vacate Prescription which it did not already know prior to filing its Petition for Partial Reconsideration on July 5, 1995.

not even state in which direction the overhead loadings have changed. It is not clear whether Bell Atlantic is suggesting that virtual collocation rates should be increased or decreased. Bell Atlantic has provided only unsubstantiated assertions. Its Motion should be dismissed.

Bell Atlantic's Motion to vacate the prescribed overhead loadings for virtual collocation is blatantly anticompetitive and turns the Communications Act on its head. In Transmittal No. 784, Bell Atlantic proposed to offer term pricing plans for virtual collocation services. Under Section 61.38 of the Commission's rules, a carrier submitting a tariff filing offering a new service must submit supporting cost information.¹⁵ The Commission has authority under Section 201 of the Communications Act to determine the reasonableness of the proposed rates and service offering. Bell Atlantic has informed the Commission that it is withdrawing Transmittal No. 784 because the Commission has informed Bell Atlantic that it will delay the effective date of the tariff. Bell Atlantic has stated that it will delay filing additional pricing plans because it "does not wish to risk similar dispute," referring to the possibility that its overhead loadings are again too large.

Bell Atlantic's stated-actions are tantamount to it attempting to hold the Commission and interconnectors hostage. Bell Atlantic's position is that if the Commission does not allow Bell Atlantic's transmittals to become effective when

¹⁵ 47 C.F.R. §61.38.

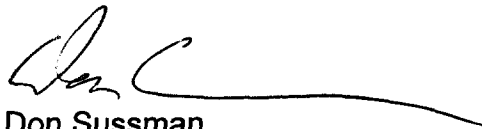
filed, and as filed, then it will not meet reasonable requests by its interconnectors for service.¹⁶ Bell Atlantic, in effect, is saying that it will play only by its own rules and agenda, and that it will not be constrained by the Commission's rules nor the Communications Act. The Commission has clear authority to delay the effective date of a transmittal so that it may further assess the reasonableness of the proposed rates, terms and conditions. Bell Atlantic's conduct is strong evidence that the Commission needs to consider prescribing a rate structure for interconnection.

¹⁶ 47 U.S.C. 201(a). The fact that Bell Atlantic filed term discount plans for virtual collocation services in Transmittal No. 784, clearly demonstrates that interconnectors' requests for term plans are reasonable.

IV. Conclusion

The Commission is in the midst of investigating the rates, terms, and conditions of the local exchange carriers' proposed virtual collocation tariffs. While Phase I is complete, the Commission has just recently initiated Phase II, which will focus on direct cost components of the LECs' virtual collocation rates. Since the investigation into the reasonableness of the proposed virtual collocation rates is still pending, it is premature for the Commission to even consider changing its prescribed overhead loadings. Moreover, as explained supra, Bell Atlantic's Motion should be dismissed because it is procedurally deficient, blatantly anticompetitive, and vague.

Respectfully submitted,
MCI TELECOMMUNICATIONS CORPORATION

A handwritten signature in black ink, appearing to read 'Don Sussman', with a long horizontal flourish extending to the right.

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September 28, 1995

STATEMENT OF VERIFICATION

I have read the foregoing and, to the best of my knowledge, information, and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on September 28, 1995.

A handwritten signature in dark ink, appearing to be 'Don Sussman', written over a horizontal line.

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CERTIFICATE OF SERVICE

I, Stan Miller, do hereby certify that copies of the foregoing Opposition were sent via first class mail, postage paid, to the following on this 28th day of September, 1995.

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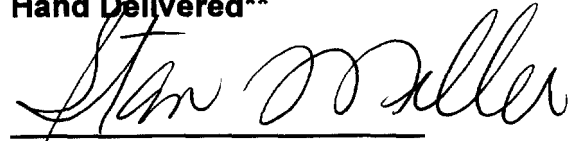
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